

Senate Bill No. 1033

CHAPTER 1061

An act to amend Section 664.5 of, and to add Section 1278.5 to, the Code of Civil Procedure, and to amend Sections 2021, 2060, 2080, 2081, 2105, and 2106 of the Family Code, relating to family law.

[Approved by Governor September 28, 1996. Filed
with Secretary of State September 30, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1033, Committee on Judiciary. Family law.

(1) Existing law specifies a procedure for the establishment of a change of name.

This bill would authorize a court to deny a petition for the change of name of a minor, under specified circumstances, where the court finds the name change is not in the minor's best interest.

(2) Existing law contains references to employee pension benefit plans.

This bill would revise those provisions to instead refer to employee benefit plans.

(3) Existing law provides that in a proceeding for dissolution or nullity of marriage, the court, upon request of the wife, shall restore her birth or former name, as specified, and that this request shall not be denied on the basis that she has custody of a minor child bearing a different name or any other reason other than fraud.

This bill would apply these provisions to both parties to a proceeding for dissolution or nullity of marriage.

(4) Existing law requires that the parties in a procedure for the dissolution of marriage file a final declaration of disclosure of specified financial information on each other, as specified.

This bill would specifically authorize the attorneys for the parties to file the declaration.

The people of the State of California do enact as follows:

SECTION 1. Section 664.5 of the Code of Civil Procedure is amended to read:

664.5. (a) In any contested action or special proceeding other than a small claims action or an action or proceeding in which a prevailing party is not represented by counsel, the party submitting an order or judgment for entry shall prepare and mail a copy of the notice of entry of judgment to all parties who have appeared in the action or proceeding and shall file with the court the original notice of entry of judgment together with the proof of service by mail. This

subdivision does not apply in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation.

(b) Promptly upon entry of judgment in a contested action or special proceeding in which a prevailing party is not represented by counsel, the clerk of the court shall mail notice of entry of judgment to all parties who have appeared in the action or special proceeding and shall execute a certificate of such mailing and place it in the court's file in the cause.

(c) For purposes of this section, "judgment" includes any judgment, decree, or signed order from which an appeal lies.

(d) Upon order of the court in any action or special proceeding, the clerk shall mail notice of entry of any judgment or ruling, whether or not appealable.

SEC. 2. Section 1278.5 is added to the Code of Civil Procedure, to read:

1278.5. In any proceeding pursuant to this title in which a petition has been filed to change the name of a minor, and both parents, if living, do not join in consenting thereto, the court may deny the petition in whole or in part if it finds that any portion of the proposed name change is not in the best interest of the child.

SEC. 3. Section 2021 of the Family Code is amended to read:

2021. (a) Subject to subdivision (b), the court may order that a person who claims an interest in the proceeding be joined as a party to the proceeding in accordance with rules adopted by the Judicial Council pursuant to Section 211.

(b) An employee benefit plan may be joined as a party only in accordance with Chapter 6 (commencing with Section 2060).

SEC. 4. Section 2060 of the Family Code is amended to read:

2060. (a) Upon written application by a party, the clerk shall enter an order joining as a party to the proceeding any employee benefit plan in which either party to the proceeding claims an interest that is or may be subject to disposition by the court.

(b) An order or judgment in the proceeding is not enforceable against an employee benefit plan unless the plan has been joined as a party to the proceeding.

SEC. 5. Section 2080 of the Family Code is amended to read:

2080. In a proceeding for dissolution of marriage or for nullity of marriage, but not in a proceeding for legal separation of the parties, the court, upon the request of a party, shall restore the birth name or former name of that party, regardless of whether or not a request for restoration of the name was included in the petition.

SEC. 6. Section 2081 of the Family Code is amended to read:

2081. The restoration of a former name or birth name requested under Section 2080 shall not be denied (a) on the basis that the party has custody of a minor child who bears a different name or (b) for any other reason other than fraud.

SEC. 7. Section 2105 of the Family Code is amended to read:



2105. (a) Except by court order for good cause or as provided in subdivision (c), before or at the time the parties enter into an agreement for the resolution of property or support issues other than pendente lite support, or, in the event the case goes to trial, no later than 45 days before the first assigned trial date, each party, or the attorney for the party in this matter, shall serve on the other party a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the final declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury.

(b) The final declaration of disclosure shall include all of the following information:

(1) All material facts and information regarding the characterization of all assets and liabilities.

(2) All material facts and information regarding the valuation of all assets that are contended to be community property or in which it is contended the community has an interest.

(3) All material facts and information regarding the amounts of all obligations that are contended to be community obligations or for which it is contended the community has liability.

(4) All material facts and information regarding the earnings, accumulations, and expenses of each party that have been set forth in the income and expense declaration.

(c) The parties may stipulate to a mutual waiver of the requirements of subdivision (a) concerning the final declaration of disclosure by execution of a waiver in a marital settlement agreement or by stipulated judgment or a stipulation entered into in open court. The waiver shall include all of the following representations:

(1) Both parties have complied with Section 2104 and the preliminary declarations of disclosure have been completed and exchanged.

(2) Both parties have completed and exchanged a current income and expense declaration.

(3) The waiver is knowingly, intelligently, and voluntarily entered into by each of the parties.

(4) Each party understands that by signing the waiver, he or she may be affecting his or her ability to have the judgment set aside as provided by law.

(d) Whether execution of a mutual waiver of the final declaration of disclosure requirements pursuant to subdivision (c) will affect the rights of either party to have the judgment set aside or will affect the fiduciary obligations of each to the other shall be decided by a court based on the law and the facts of each particular case. The authority



to execute a mutual waiver provided by this section is not intended, in and of itself, to affect the law regarding the fiduciary obligations owed by the parties, the parties' rights with respect to setting aside a judgment, or any other rights or responsibilities of the parties as provided by law.

SEC. 8. Section 2106 of the Family Code is amended to read:

2106. Except as provided in subdivision (c) of Section 2105, absent good cause, no judgment shall be entered with respect to the parties' property rights without each party, or the attorney for that party in this matter, having executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party or that service of the final declaration of disclosure has been waived pursuant to subdivision (c) of Section 2105.

